

April 24, 2013

GLORIA L. FRANKLIN, CLERK

U.S. BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

FILED**APR 24 2013**

UNITED STATES BANKRUPTCY COURT
 United States Bankruptcy Court
 San Jose, California
 NORTHERN DISTRICT OF CALIFORNIA

In re]	Case No. 01-55137-ASW
]	
]	
SILICON VALLEY TELECOM]	
EXCHANGE, LLC,]	Chapter 11
]	
Debtor.]	

ORDER DENYING MOTION FOR LACK OF JURISDICTION

Before the Court is "Plan Proponents' Motion for Reconsideration and/or Clarification of the Memorandum of Decision Following Evidentiary Heard [sic]." In the motion, Debtor Silicon Valley Telecom Exchange, Silicon Valley Telecom & Internet Exchange, and Rubio & Associates, Inc. (collectively, "Movants") ask the Court to clarify certain aspects of the Court's March 4, 2013 Memorandum Decision Following Evidentiary Hearing (hereafter, "the Memorandum Decision"), and to reconsider the Memorandum Decision. Movants set the motion to be heard on April 26, 2013.

The instant motion was filed approximately 6 hours after Creditor David Tilem filed a notice of appeal to the Bankruptcy Appellate Panel ("the BAP"). The motion does not address whether this Court has jurisdiction to rule on the merits of the motion

1 given Mr. Tilem's appeal. However, as the BAP explained in Marino
2 v. Classic Auto Refinishing, Inc. (In re Marino), 234 B.R. 767, 769
3 (B.A.P. 9th Cir. 1999), reversed on other grounds, 181 F.3d 1142
4 (9th Cir. 1999), the filing of a notice of appeal has
5 jurisdictional significance. When Mr. Tilem filed the notice of
6 appeal, the effect was to divest the bankruptcy court of any
7 control over the aspects of this case which are involved in the
8 appeal, including the "jurisdiction to vacate or modify an order
9 which is on appeal." Id. (citing Trulis v. Barton, 107 F.3d 685,
10 694-95 (9th Cir. 1995), and In re Hagel, 184 B.R. 793, 798 (B.A.P.
11 9th Cir. 1995); In re Bialac, 694 F.2d 625, 627 (9th Cir. 1982)
12 ("Even though a bankruptcy court has wide latitude to reconsider
13 and vacate its own prior decisions, not even a bankruptcy court may
14 vacate or modify an order while on appeal."). A bankruptcy court
15 simply cannot take actions "to expand upon or alter the
16 judgment[.]" In re Marino, 234 B.R. at 770. However, a bankruptcy
17 court retains jurisdiction to implement or enforce an order which
18 is being appealed. Id. at 769-770.

19 The motion before this Court asks the Court to clarify the
20 scope of the Memorandum Decision with regard to the employment of a
21 certified public accountant and the accountant's specific duties.
22 Movants seek clarification about the requirement to produce audited
23 and certified financial statements, and argue that "audited reports
24 are unduly expensive, unnecessary, and cannot be produced in the
25 time allotted to submit reports to creditors." Movants also
26 contend that "it is beyond the scope of an accountant's function to
27 render opinions on the reasonableness or propriety of expenses[.]"
28 and are concerned that the Court has ordered Debtor's accountant to

1 undertake such review. The motion acknowledges that Marcia
2 Gerston, the attorney for David Tilem, was planning to file an
3 appeal on this issue.

4 The motion seeks more than the mere definition of terms to aid
5 with implementation. Instead, Movants have asked the Court to
6 alter the Memorandum Decision itself. Because of the pending
7 appeal, the Court lacks jurisdiction to order such relief.
8 Therefore, the motion is denied, without prejudice, for lack of
9 jurisdiction.

10 **IT IS SO ORDERED.**

11 Dated: 4/24/13

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13 ARTHUR S. WEISSBRODT
14 UNITED STATES BANKRUPTCY JUDGE
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